



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 6, 2005

Ms. Sara Lynn Hayes
Victim Assistance Coordinator
Twenty-First Judicial District
100 West Buck, Suite 407
Caldwell, Texas 77836

OR2005-02958

Dear Ms. Hayes:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 221499.

The District Attorney for the Twenty-First Judicial District of Texas (the "district attorney") received a request for nine categories of information pertaining to a specified accident investigation. You state that the district attorney does not have some of the requested information.¹ You indicate that the remaining requested information is excepted from disclosure pursuant to sections 552.003(1)(B), 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You state that all of the submitted information "remains a part of the Washington County Grand Jury records." This office has concluded that a grand jury is not a governmental body that is subject to the Act, so records that are within the actual or constructive possession of a grand jury are not subject to disclosure under the Act. *See* Gov't Code §§ 552.003(1)(B)

¹ We note that the Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request for information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

(Act's definition of governmental body does not include judiciary), .0035 (access to information collected, assembled, or maintained by or for judiciary is governed by rules adopted by Supreme Court of Texas or other applicable laws and rules); Open Records Decision No. 513 at 3 (1988) (information held by grand jury, which is extension of judiciary for purposes of Act, is not itself subject to Act). When an individual or an entity acts at the direction of the grand jury as its agent, information prepared or collected by the agent is within the grand jury's constructive possession and is not subject to the Act. *See* Open Records Decision No. 513 at 3. Information that is not so held or maintained is subject to the Act and may be withheld from the public only if a specific exception to disclosure is shown to be applicable. *Id.* We note that the medical records, labeled as Items 10 and 11 of the submitted information, were obtained by the district attorney through the use of a grand jury subpoena at the direction of the grand jury. Thus, we understand that the district attorney is holding these records as an agent of the grand jury. Therefore, the medical records we have marked are not subject to disclosure under the Act.

However, it is not clear to this office that the remaining submitted information is in fact in the constructive possession of the grand jury. We note, that to the extent that the information at issue is in the custody of the district attorney as an agent of the grand jury, it is not subject to disclosure under the Act. The rest of this decision is not applicable to such information. However, to the extent that the remaining information is not in the custody of the district attorney as an agent of the grand jury, it is subject to disclosure under the Act and the ruling below.

We note that the submitted information includes a "Texas Peace Officer's Accident Report," that is subject to chapter 550 of the Transportation Code. Section 550.065(b) provides that, except as provided by subsection (c), accident reports are privileged and confidential. *See* Transp. Code § 550.065(b). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *See* Transp. Code § 550.065(c)(4). Under this provision, the Department of Public Safety or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *See id.* In this instance, the requestor has provided the district attorney with two of the three pieces of information specified by the statute. Thus, the district attorney must release the accident report, which we have marked, in its entirety pursuant to section 550.065(c)(4) of the Transportation Code. *See* Open Records Decision No. 525 (1989) (exceptions found in Act generally do not apply to information made public by other statutes).

We now address your section 552.108 claim for the remaining submitted information. Section 552.108(a)(2) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution

of crime only in relation to an investigation that did not result in conviction or deferred adjudication [.]” Section 552.108(a)(2) is applicable only if the information in question relates to a concluded case that did not result in a conviction or a deferred adjudication. You inform us that the submitted information pertains to a criminal investigation that did not result in conviction or deferred adjudication. Based on your representations and our review, we agree that section 552.108(a)(2) is applicable to the remaining submitted information.

However, section 552.108 does not except basic information about an arrested person, an arrest, or a crime. See Gov’t Code § 552.108(c), *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ ref’d n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976). We believe such basic information refers to the information held to be public in *Houston Chronicle*, including a detailed description of the offense. See 531 S.W.2d at 186-87. Thus, the district attorney must release the types of information that are considered to be front page information, even if this information is not actually located on the front page. See Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). With the exception of the basic information, the district attorney may withhold the remaining submitted information based on section 552.108(a)(2). We note that the district attorney has the discretion to release all or part of the information at issue that is not otherwise confidential by law. Gov’t Code § 552.007.

In summary, the marked medical records that are in the custody of the district attorney as agent of the grand jury are not subject to disclosure under the Act pursuant to section 552.003 of the Government Code. To the extent that the remaining submitted information is also in the custody of the district attorney as an agent of the grand jury, these records are not subject to the Act. However, to the extent that the district attorney does not have custody of this information as an agent of the grand jury, the marked accident report must be released to the requestor pursuant to section 550.065(c)(4) of the Transportation Code. Furthermore, with the exception of basic information that must be released, the remaining submitted information may be withheld pursuant to section 552.108 of the Government Code. As our ruling is dispositive, we do not address your other claimed exception.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

Id. § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/seg

Ref: ID# 221499

Enc. Submitted documents

c: Mr. D. J. Criste
9743 Knights Drive
Houston, Texas 77065
(w/o enclosures)